

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ACE V. WHITENER,

Petitioner,

v.

CALVIN JOHNSON, *et al.*,

Respondents.

Case No. 3:22-cv-00528-ART-CSD

ORDER

In this habeas corpus action, the Court appointed counsel for the petitioner, Ace V. Whitener (ECF No. 4), and, with counsel, Whitener was due to file an amended habeas petition by April 10, 2023 (*see* ECF No. 11).

On April 4, 2023, Whitener filed a Motion for Stay and Abeyance (ECF No. 12), requesting that this action be stayed while he completes litigation of a pending state habeas action. Whitener states that he filed a timely direct appeal, and the Nevada Supreme Court affirmed his conviction on April 26, 2019. He states that he then filed a state habeas petition—his first state post-conviction action—on or about January 7, 2020, and that action remains pending. He states that he filed his petition in this federal habeas action as a protective petition. *See Pace v. DeGuglielmo*, 544 U.S. 408, 416–17 (2005). He states that until he completes his state habeas action, he will not have exhausted in state court all the claims he has asserted in that action or all the claims he might assert in this action, and he therefore requests that this action be stayed until the state-court action is concluded.

Whitener's counsel represents that Respondents do not oppose the motion for stay and abeyance, and, indeed, Respondents did not respond to the motion.

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1 It is therefore ordered that Petitioner's Motion for Stay and Abeyance (ECF
2 No. 12) is granted. This action is stayed while Petitioner completes his state
3 habeas action.


4 It is further ordered that following the conclusion of Petitioner's state-court
5 proceedings Petitioner must, within 30 days, make a motion to lift the stay of this
6 action.

7 It is further ordered that this action will be subject to dismissal if Petitioner
8 does not comply with the time limits in this order, or if he otherwise fails to
9 proceed with diligence during the stay imposed by this order.

10 It is further ordered that The Clerk of the Court is directed to
11 administratively close this case.

12 It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d),
13 Calvin Johnson is substituted for Tim Garrett as the respondent warden. The
14 Clerk of the Court is directed to update the docket to reflect this change.

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16 DATED THIS 20th day of April, 2023.

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20 ANNE R. TRAUM
21 UNITED STATES DISTRICT JUDGE
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